

AMENDED IN ASSEMBLY MAY 2, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 3407**

**Introduced by Assembly Member ~~Takasugi~~ Knowles**

February 23, 1996

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An act to amend Section ~~7273~~ 6359 of the Revenue and Taxation Code, relating to taxation, *to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 3407, as amended, ~~Takasugi—Knowles. Transactions and use taxes: cost of administration: recovery~~ *Sales and use taxes: exemption: food products.*

*The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law provides various exemptions from that tax, including an exemption for food products for human consumption, as specified. An exception to that exemption is made for "hot prepared food products," which is defined as those products that have been prepared for sale in a heated condition and which are sold at any temperature that is higher than the air temperature of the place where they are sold.*

*This bill would amend that definition to refer to products that have been prepared for sale in a heated condition and which are sold at any temperature that is higher than the ambient temperature of the place where they are sold.*

*This bill would also provide an exemption for food products for human consumption if the food products are provided by a hotel, motel, bed and breakfast inn, or similar transient lodging establishment solely for consumption by transient guests and their invitees, if specified other conditions are met.*

*Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are incorporated into the local taxes.*

*Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.*

*This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.*

*This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.*

~~The Transactions and Use Tax Law requires the State Board of Equalization to charge each district imposing a transactions and use tax under that law an amount, as determined pursuant to specified criteria by the board in concurrence with the Department of Finance, for reimbursement of the board's services in administering that tax.~~

~~This bill would make technical, nonsubstantive changes to this administrative charge provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

- 1 ~~SECTION 1. — Section 7273 of the Revenue and~~
- 2 *SECTION 1. Section 6359 of the Revenue and*
- 3 *Taxation Code is amended to read:*
- 4 6359. (a) There are exempted from the taxes
- 5 imposed by this part the gross receipts from the sale of,
- 6 and the storage, use, or other consumption in this state of,
- 7 food products for human consumption.

(b) For the purposes of this section, “food products” include all of the following:

(1) Cereals and cereal products, oleomargarine, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, candy, gum, confectionery, coffee and coffee substitutes, tea, and cocoa and cocoa products.

(2) Milk and milk products, milkshakes, malted milks, and any other similar type beverages that are composed at least in part of milk or a milk product and that require the use of milk or a milk product in their preparation.

(3) All fruit juices, vegetable juices, and other beverages, whether liquid or frozen, including bottled water, but excluding spirituous, malt, or vinous liquors or carbonated beverages.

(c) For purposes of this section, “food products” do not include medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts.

(d) None of the exemptions provided for in this section apply to any of the following:

(1) When the food products are served as meals on or off the premises of the retailer.

(2) When the food products are furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware whether provided by the retailer or by a person with whom the retailer contracts to furnish, prepare, or serve food products to others.

(3) When the food products are ordinarily sold for immediate consumption on or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products purchased at the location, even though such products are sold on a “take out” or “to go” order and are actually packaged or wrapped and taken from the premises of the retailer.

(4) When the food products are sold for consumption within a place, the entrance to which is subject to an admission charge, except for national and state parks and

1 monuments, marinas, campgrounds, and recreational  
2 vehicle parks.

3 (5) When the food products are sold through a  
4 vending machine.

5 (6) When the food products sold are furnished in a  
6 form suitable for consumption on the seller's premises,  
7 and both of the following apply:

8 (A) Over 80 percent of the seller's gross receipts are  
9 from the sale of food products.

10 (B) Over 80 percent of the seller's retail sales of food  
11 products are sales subject to tax pursuant to paragraph  
12 (1), (2), (3), or (7).

13 (7) When the food products are sold as hot prepared  
14 food products.

15 (e) "Hot prepared food products," for the purposes of  
16 paragraph (7) of subdivision (d), include a combination  
17 of hot and cold food items or components where a single  
18 price has been established for the combination and the  
19 food products are sold in combination, such as a hot meal,  
20 a hot specialty dish or serving, a hot sandwich, or a hot  
21 pizza, including any cold components or side items.  
22 Paragraph (7) of subdivision (d) shall not apply to a sale  
23 for a separate price of bakery goods or beverages (other  
24 than bouillon, consommé, or soup), or where the food  
25 product is purchased cold or frozen; "hot prepared food  
26 products" means those products, items, or components  
27 that have been prepared for sale in a heated condition  
28 and that are sold at any temperature that is higher than  
29 the ~~air~~ *ambient* temperature of the room or place where  
30 they are sold.

31 (f) Notwithstanding paragraph (6) of subdivision (d),  
32 if the seller elects to separately account for sales of food  
33 products specified in subdivision (b), then the gross  
34 receipts from the sale of those food products shall be  
35 exempt under subdivision (a), provided that the separate  
36 accounting is fully documented in the seller's records.  
37 However, if the seller's records do not reflect the separate  
38 accounting of the gross receipts from sales of nontaxable  
39 food products, the seller's election under this subdivision  
40 shall be revoked.

1 (g) (1) Notwithstanding any other provision of this  
2 section or of this part, there are exempted from the taxes  
3 imposed by this part the gross receipts from the sale in this  
4 state of, and the storage, use, or other consumption in this  
5 state of, food products for human consumption when all  
6 of the following conditions are met:

7 (A) The food products are provided by a hotel, motel,  
8 bed and breakfast inn, or similar transient lodging  
9 establishment solely for consumption by its transient  
10 guests and the invitees of those guests.

11 (B) The uniform cost of the food products is included  
12 in the price of the overnight transient occupancy  
13 accommodation, however denominated, and whether or  
14 not separately stated.

15 (C) The price of the overnight transient occupancy  
16 accommodation at the establishment is subject to a tax  
17 levied by the legislative body of any city, county, city and  
18 county, or any other political subdivision on the privilege  
19 of occupying a room or rooms in a hotel, motel, bed and  
20 breakfast inn, or similar transient lodging establishment.

21 (2) The exemption provided in this subdivision shall  
22 apply regardless of whether the tax that is referred to in  
23 subparagraph (C) of paragraph (1), whether  
24 characterized as a "transient occupancy tax" or  
25 otherwise, is levied pursuant to Section 7280, pursuant to  
26 charter or other similar authority of the legislative body,  
27 or otherwise pursuant to law.

28 (3) For purposes of this subdivision, "hotel," "motel,"  
29 "bed and breakfast inn," or "similar transient lodging  
30 establishment" means an establishment containing guest  
31 room accommodations with respect to which the  
32 predominant relationship existing between the  
33 occupants thereof and the owner or operator of the  
34 establishment is that of innkeeper and guest. The  
35 existence of other relationships as between some  
36 occupants and the owner or operator thereof shall be  
37 immaterial.

38 SEC. 2. This act provides for a tax levy within the  
39 meaning of Article IV of the Constitution and shall go into  
40 immediate effect. However, the provisions of this act shall

1 become operative on the first day of the first calendar  
2 quarter commencing more than 90 days after the  
3 effective date of this act.

4 ~~Taxation Code is amended to read:~~

5 ~~7273. In addition to the amounts otherwise provided~~  
6 ~~for preparatory costs, the board shall charge an amount~~  
7 ~~for its services in administering the transactions and use~~  
8 ~~tax that is determined by the board with the concurrence~~  
9 ~~of the Department of Finance, as follows:~~

10 (a) ~~Beginning with the 1993-94 fiscal year, the amount~~  
11 ~~charged shall be based on the total special taxing~~  
12 ~~jurisdiction costs reflected in the annual Budget Act. This~~  
13 ~~amount shall comprise the categories of direct, shared,~~  
14 ~~and central agency costs incurred by the board, and shall~~  
15 ~~include the following:~~

16 (1) ~~The amount charged to each entity shall be based~~  
17 ~~on the recommendations incorporated in the March 1992,~~  
18 ~~report by the Auditor General entitled "The Board of~~  
19 ~~Equalization Needs To Adjust Its Model For Setting~~  
20 ~~Reimbursement Rates For Special Tax Jurisdictions."~~

21 (2) ~~The amount charged may be adjusted in the~~  
22 ~~current fiscal year to reflect the difference between the~~  
23 ~~board's budgeted costs and any significant revised~~  
24 ~~estimate of costs. Any adjustment shall be subject to~~  
25 ~~budgetary controls included in the Budget Act. Prior to~~  
26 ~~any adjustment, the Department of Finance shall notify~~  
27 ~~the Chairperson of the Joint Legislative Budget~~  
28 ~~Committee not later than 30 days prior to the effective~~  
29 ~~date of the adjustment.~~

30 (3) ~~For the 1995-96 fiscal year and each fiscal year~~  
31 ~~thereafter, the amount charged shall be adjusted to~~  
32 ~~reflect the difference between the board's recovered~~  
33 ~~costs and the actual costs incurred by the board during~~  
34 ~~the fiscal year two years prior.~~

35 (b) ~~The board shall notify districts by June 1 of the~~  
36 ~~amount that it anticipates will be assessed for the next~~  
37 ~~fiscal year. The districts shall be notified of the actual~~  
38 ~~amounts that will be assessed within 30 days after~~  
39 ~~enactment of the Budget Act for that fiscal year.~~

1     ~~(c) The amount charged a transactions and use tax~~  
2     ~~district that becomes operative during the fiscal year shall~~  
3     ~~be estimated for that fiscal year based on that district's~~  
4     ~~proportionate share of direct, indirect, and shared costs.~~  
5     ~~(d) The amounts determined by subdivision (a) shall~~  
6     ~~be deducted in equal amounts from the quarterly~~  
7     ~~allocation of taxes collected by the board for a given~~  
8     ~~district.~~

